JAN 1 0 1996

### STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPARTMENT OF INSURANCE

In the Matter of

Docket No. 95-239

RUTH ANNE ALVAREZ,

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Petitioner.

On December 11, 1995, a hearing took place in the above-referenced matter. Assistant Attorney General Patrick Irvine appeared on behalf of the Arizona Department of Insurance ("Department"). Petitioner Ruth Anne Alvarez ("Ms. Alvarez") appeared on her own behalf.

Based upon the entire record, including all pleadings, motions, testimony, and exhibits, Administrative Law Judge Lewis D. Kowal prepared the following Findings of Fact, Conclusions of Law, and Order for consideration and approval by the Director of the Department (the "Director"). The Director adopts and enters the following Findings of Fact, Conclusions of Law and enters the following Order:

## FINDINGS OF FACT

- 1. At all times material to these matters, Ms.

  Alvarez was licensed by the Department as a surplus line broker.
- 2. Ms. Alvarez credibly testified that when she became licensed in 1992 she was aware that annual filings were required to be made and premium taxes required to be paid to the Department March 1st of each year.
- 3. On November 18, 1993, the Department sent Ms.

  Alvarez via certified mail a notice of delinquency for the 1992

  Surplus Line Broker Annual Statement and Premium Tax Report along

1

2

3

4

5

6

7

8

141516

13

17

18

1920

21

22

**2**3

24

**2**5

26

2728

with the appropriate forms and instructions. Ms. Alvarez never received that notice and the return receipt indicates that the letter was returned to the Department "delivery attempted, not known." The letter was mailed to 2133 North Grand Avenue #73, Nogales, AZ 85621.

- 4. Ms. Alvarez credibly testified that for the 1992 calendar year she did not have any sales associated with her surplus line broker's license. The Department did not contest this fact.
- 5. On April 29, 1994, the Department sent Ms. Alvarez a notice of delinquency for the 1993 Surplus Line Broker Annual Statement and Premium Tax Report. That letter was mailed to 2150 North Isabell Blvd., Tucson, AZ 85712.
- 6. On May 4, 1994, the Department sent Ms. Alvarez via certified mail a notice of delinquency for the 1993 Surplus Line Broker Annual Statement and Premium Tax Report. Ms. Alvarez did not receive that notice and the return receipt indicates that the letter was returned to the Department "delivery attempted, not known." The letter was mailed to 2133 North Grand Ave. #73, Nogales, AZ 85621.
- 7. On July 20, 1994, Brian Stephan, Tax Unit Supervisor for the Department, sent Ms. Alvarez a letter via certified mail notifying her of her failure to file the Annual Statement and Premium Tax Reports for the calendar years 1992 and 1993. Ms. Alvarez received that letter and signed a receipt indicating delivery on July 25, 1994.
- 8. On August 2, 1994, Ms. Alvarez sent the Department a Premium Tax Report for 1993 and a check in the amount of

\$769.18 based on a 3.2% tax rate. The correct premium tax rate as indicated on the Premium Tax Report form is 3%.

- 9. On February 13, 1995, Mr. Stephan wrote to Ms. Alvarez returning the \$769.18 check on the basis that the check had been misplaced and become stale. Mr. Stephan requested that Ms. Alvarez forward a replacement check to the Department and informed Ms. Alvarez that the premium tax rate was 3% not 3.2%.
- 10. On May 17, 1995, the Department sent Ms. Alvarez via certified mail a notice of delinquency for the 1994 Surplus Line Broker Annual Statement and Tax Report.
- 11. In October 1995, Ms. Alvarez filed the 1992
  Surplus Line Broker Annual Statement and Premium Tax Report with
  the Department.
- 12. On behalf of the Department, Mr. Stephan sent Ms. Alvarez a letter dated October 24, 1995, informing her that the filings she made for 1992 and 1994 did not include the first page of the report. Mr. Stephan enclosed those forms with his October 24, 1995 letter to Ms. Alvarez.
- 13. On October 23, 1995, Ms. Alvarez sent the Department a replacement check for \$769.18 for the 1993 tax year.
- 14. On October 30, 1995, Ms. Alvarez mailed the completed 1992 and 1994 forms to Mr. Stephan.
- 15. On November 1, 1995, Ms. Alvarez filed her 1994
  Surplus Line Broker Annual Statement and Premium Tax Report with
  the Department and provided the Department with a check dated
  October 23, 1995, in the amount of \$1,084.18 for the 1994 premium
  taxes owed based on a 3.2% tax rate. The corrent premium tax
  rate as indicated on the Premium Tax Report is 3%.

16. Ms. Alvarez's Surplus Line Broker Annual Statements and Premium Tax Reports for the calendar years 1992, 1993 and 1994 were delinquently filed and payment of premium taxes to the Department for calendar years 1993 and 1994 were delinquent.

### CONCLUSIONS OF LAW

- 1. Ms. Alvarez received notice of this proceeding as prescribed by A.R.S. §§20-163 and 41-1061.
- 2. The Director has jurisdiction over this matter pursuant to A.R.S. §§20-161, 20-290, 20-316 and 20-417.
- 3. Surplus line brokers are required to file on or before March 1st of each year an Annual Statement and Premium Tax Report with the Department pursuant to A.R.S. §20-415.
- 4. Surplus line brokers are required to remit to the State Treasurer through the Director premium taxes on on before March 1st of each year pursuant to A.R.S. §20-416.
- 5. Ms. Alvarez's Surplus Line Broker Annual Statements and Premium Tax Reports for the calendar years 1992, 1993 and 1994 were not timely filed in accordance with A.R.S. §20-415.
- 6. Ms. Alvarez's payment of premium taxes to the Department for the calendar years 1993 and 1994 were not timely made in accordance with A.R.S. §20-416.
- 7. Pursuant to A.R.S. §20-316(C), the Director has the authority to impose civil penalties for delinquent filing of Surplus Line Broker Annual Statements and Premium Tax Reports.
  - 8. Pursuant to A.R.S. §20-417, the Director has the

authority to impose civil penalties for delinquent payment of premium taxes.

### ORDER

IT IS ORDERED that within 60 days of this Order:

- 1. Ruth Ann Alvarez pay to the Department civil penalties totaling \$4,625.00, computed as follows:
- a) \$50.00 civil penalty for the delinquent filing of the Surplus Line Broker Annual Statement and Premium Tax Report for the 1992 calendar year;
- b) \$100.00 civil penalty for the delinquent filing of the Surplus Line Broker Annual Statement and Premium Tax Report for the 1993 calendar year;
- c) \$1,995.00 civil penalty for late payment of the 1993 premium taxes (computed at a rate of \$5.00 per day for 399 days);
- d) \$150.00 civil penalty for the delinquent filing of the Surplus Line Broker Annual Statement and Premium Tax Report for the 1994 calendar year; and
- e) \$2,330.00 civil penalty for late payment of the 1994 premium taxes (computed at a rate of \$10.00 per day for 233 days).

28 . .

6

10

12

11

13

14 15

16

17

18 19

20

21 22

23

24

25 26

27

28

2. The Department shall credit Ms. Alvarez with the amount of her overpayment of premium taxes for the calendar years 1993 and 1994 and offset that amount from the \$4,625.00 civil penalty imposed by this Order.

> DATED this 10th day of January, 1996.

Director of Insurance

LEWIS D. KOWAL

Administrative Law Judge

# NOTIFICATION OF RIGHTS

The aggrieved party may request a rehearing with respect to this Order by filing a written petition with the Administrative Law Division within 30 days of the date of this Order, setting forth the basis for such relief pursuant to A.A.C. R20-6-114(B).

The final decision of the Director may be appealed to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. §20-166.

1 COPY of the foregoing mailed/delivered this 10th day of January, 1996, to: 2 Charles R. Cohen, Deputy Director 3 Gregory Y. Harris, Executive Assistant Director Catherine O'Neil, Assistant Director Gary Torticill, Assistant Director 4 Scott Greenberg, Business Manager 5 Maureen Catalioto, Licensing Supervisor Barbara Lewis, Compliance Section Manager Brian Stephan, Tax Unit Supervisor Department of Insurance 2910 N. 44th Street, Suite 210 Phoenix, Arizona 85018 8 Patrick Irvine Assistant Attorney General 9 1275 W. Washington Phoenix, Arizona 85007 10 Ruth Anne Alvarez 11 2133 N. Grand Ave., #73 Nogales, AZ 85621 12 John Rohwer, Manager 13 The Surplus Lines Assn. of Arizona 4041 N. Central Ave., #515 14 Phoenix, AZ 85012 15 16 Chris Crawford 17 18 19 20 21 22 23 24

25

26

27

28